baby to town testified that she was alive when he started, and that she was breathing when he arrived at a point one block from his destination. On this evidence, the Supreme Court of California holds that since both train and buggy reached the town together Loucks expired first, because he last showed signs of life before the train started for the town, while the child was alive after the buggy was in the town.

Boy Uses Axe on Explosives.—In Bennett *v.* Odell Manufacturing Company, 80 Atlantic Reporter, 642, defendants are sued for personal injuries to a boy. Defendants maintained a storehouse wherein they kept supplies for their business, including dynamite and copper caps. Ralph Bennett, a boy about nine years old, happened along one day, and upon seeing the door to the storehouse open and no one inside, entered, and picked up and carried away some of the copper exploders which he saw lying about. He took the caps home and did the most natural thing that a boy would be expected to do, namely, placed one of the caps on a block, got an axe and struck it. That strike came near being the end of Ralph, for he was injured and now seeks damages. The Supreme Court of New Hampshire holds that the unlawful storing of the explosives was not a proximate cause of the injury.

Right of Relatives to Counsel Married Couples.—A parent, brother, or sister has the right to counsel a married son, daughter, brother, or sister in good faith, within reasonable limits, when not maliciously done and when done for the apparent best interest of the party advised, without the person so advising being liable to an action for injury caused one party to the marriage, resulting from the advice so given. This privilege, by reason of relationship, arises on the presumption that the party so advising, because of natural love and affection of near-blood relatives toward one another, would act only for the best interests and with proper motives toward the person advised. The Supreme Court of North Dakota in Luick *v.* Arends, 132 Northwestern Reporter, 353, holds that whether the privilege thus accorded near blood relatives in such matters extends to a brother-in-law of the wife advised, in this case, is a question of fact for the jury to determine under all the circumstances, under proper instructions from the court.

Insurance—Ship—Damage to Hull—Latent Defect Existing Prior to Insurance—Costs of Replacing Stern Frame Owing to Latent Defect.—Hutchins *v.* Royal Exchange Assurance Corporation (1911) 2 K. B. 398 was an action on a policy of marine insurance which contained what is known as the Inchmaree clause, providing that the policy should cover loss or damage to the hull through any latent

defect in the hull. At the time the insurance was effected there was an unknown latent defect in the stern frame, which defect during the currency of the policy was discovered, and a new stern frame had to be substituted, and the question in the action was whether the cost of the new stern frame was a loss recoverable under the policy. Scrutton, J., who tried the action came to the conclusion that under the Inchmaree clause the loss recoverable is (1) actual total loss of part of the hull or machinery, through a latent defect coming into existence and causing the loss during the currency of the policy; (2) constructive total loss under the same circumstances, as where part of the hull survives, but is, by reason of the latent defect, of no value and cannot be profitably repaired, and (3) damage to other parts of the hull happening during the currency of the policy, through a latent defect, even if the latter came into existence before the policy. But he held that the pre-existing latent defect is not itself damage for which indemnity is recoverable, even if by wear and tear it first becomes visible during the currency of the policy. The action was, therefore, dismissed, and the Court of Appeal (Williams, Moulton, and Farwell, L. JJ.) affirmed the decision.—Canada Law Journal (English Case).

Mandamus against Officers.—The question arose over the publication of notice preparatory to an execution sale of realty. The sheriff it seems was a stockholder in and rather partial to a newspaper called the "Times," and wished to throw business in that direction. On the other hand, the plaintiff wanted the "Rolla Herald" to furnish the publication, and so notified the sheriff, but he declined to be so gracious, saying that he would publish the notice where he pleased. Revised Statutes 1909 of Missouri, section 2218, provides that in execution sales of realty notice thereof may be given by publication in a newspaper designated by the plaintiff or his attorney. Mandamus to require the sheriff to make the publication where desired was sought, but as there was nothing to show that the "Herald" had a larger circulation than the "Times," or that any injury would result from the sheriff's looking after his own little interest, the writ was denied; the Missouri Court of Appeals declaring the law to be that "where a public duty is sought to be enforced, in which the public generally is interested, by private citizens on behalf of the public as well as their own, they may move for a writ of mandamus and are not required to plead or prove any special or particular interest in the result of the performance of the general public duty, because the people are regarded as the real moving party; but in cases where private rights are sought to be enforced it must be made to appear by the petition or alternative writ that the petitioner has been injuriously affected by respondent's default or breach of duty, or that he will be injuriously affected if that duty is not perrormed." State *v.* Wilson, 139 Southwestern Reporter, 705.